

Michael D. Kinkley
Scott M. Kinkley
Michael D. Kinkley, P.S.
4407 N. Division, Suite 914
Spokane, WA 99207
(509) 484-5611

Kirk D. Miller
Kirk D. Miller, P.S.
211 E. Sprague Ave.
Spokane, WA 99202
(509) 413-1494

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

KELLI GRAY, and all other similarly situated,)	Case No.: CV-09-251-EFS
Plaintiff,)	
)	REPLY MEMORANDUM IN
)	SUPPORT OF PLAINTIFF'S
v.)	MOTION TO COMPEL RESPONSE
)	TO PLAINTIFF'S
SUTTELL & ASSOCIATES, et. al.)	INTERROGATORIES AND
)	REQUESTS FOR PRODUCTION
Defendants.)	

During the hearing¹ on plaintiff's motion to compel discovery² the court
ordered Midland Funding to hand to Plaintiff's counsel, while in the courtroom-at
that moment-what is called the "Servicing Agreement". On November 22, 2010,

¹ November 17, 2010 (Ct. Rec.141) regarding Plaintiff's Motion to Compel filed August 10, 2010. Being produced during the hearing & marked "confidential" effectively denied the Plaintiff any opportunity to discuss the impact of this disclosure with the court.

² On June 15, 2010, Defendant Midland Funding, LLC was served with Plaintiff's Second Set of Interrogatories and Requests for Production which encompassed the request for this document.

1 Plaintiff filed a Motion to file the Servicing Agreement under seal pursuant to
2 Protective/Confidentiality Order entered by this court is pending (request for
3 expedited hearing was denied) (Plaintiff attached a copy of the Servicing
4 Agreement to the Motion to Seal pursuant to ECF procedures and is available only
5 to the court staff for review) (Ct. Rec. 152; 160).
6

7 The Servicing Agreement demonstrates that Midland Funding can and
8 should produce other discovery that it has continued to refuse to produce (and
9 argued to the court that it can not produce). A significant concern in this matter is
10 where the money flowed to and who benefitted from the scheme, as well as how
11 much was wrongfully collected. To this end, Plaintiff asked a series of questions
12 about accounting and bank accounts that would identify the funds collected and
13 follow the money. Midland Funding said it had no information. See e.g. Ct. Rec.
14 137, p. 2 ln. 19-22.
15

16 Specifically, Midland Funding stated it could not identify and list the bank
17 accounts where portions of the alleged inflated attorney's fees were deposited (Ct.
18 Rec. 73-1 p.8-9, Midland's answer to Interrog. #4 ("identify any bank account in
19 which any portion of the \$650.00 attorney fee was deposited"). Midland claimed
20 that it does not have accounting or bank information, that the "interrogatory [4]
21 seeks information in the possession of a third party who is not named as a
22 defendant in this lawsuit". But, the Servicing Agreement on page 10, Article V
23
24
25

1 requires Midland Credit (the servicer and parent corporation of Midland Funding)
2 to maintain the very records that Plaintiff is requesting. The Servicing Agreement
3 on page 9 at §§ 4.1(c)& (d) requires the “servicer” to provide access to those books
4 and records regarding every account the “servicer” is collecting.
5

6 The Servicing Agreement also indicates that Midland Funding, LLC is a
7 shell corporation used to avoid state collection laws, with no employees, no ability
8 to control lawsuits filed in its name, and even the fee charged for “servicing” is
9 unilaterally set by the “servicer”, Midland Credit Management, Inc. (which is also
10 the sole owner of Midland Funding) (Servicing Agreement, p. 9, § 4.3 and
11 Attachment A). The “servicer” makes all decisions related to collection and
12 purchase of debts to collect (Attachment C to the Servicing Agreement).
13
14

15 Midland Funding, LLC’s only excuse for failing to produce the “Servicing
16 Agreement” prior to being ordered to during the hearing was that it would only do
17 so under Court Order. This leaves Plaintiff in the awkward position of having
18 information that contradicts Midland Funding’s position regarding access to
19 records especially bank records and the trail of the money they have collected but
20 unable to properly use that information. Since the Servicing Agreement has been
21 declared confidential by the defendants, to make it a part of the record requires
22 (under the ECF rules) a Court Order allowing it to be filed under seal. This
23 memorandum is filed in anticipation of that Order. Sections quoting the “Servicing
24
25

1 Agreement” or being more specific about particular statements will be submitted
2 under a motion to file that portion of the memorandum under seal.
3

4
5 REDACTED. REMAINDER TO BE FILED UNDER SEAL IF SERVICING
6 AGREEMENT IS ALLOWED TO BE FILED.
7

8 Dated this the 22nd day of December 2010.

9 *Michael D. Kinkley, P.S.*

10 s/ Scott M. Kinkley
11 s/ Michael D. Kinkley

12 Michael D. Kinkley
13 Attorney for Plaintiff
14 WSBA # 42434
15 (509) 484-5611
16 mkinkley@qwestoffice.net
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CM/ECF CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of December, 2010, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following:

Michael D. Kinkley mkinkley@qwestoffice.net, pleadings@qwestoffice.net;

Scott M. Kinkley skinkley@qwestoffice.net;

Kirk D. Miller kmiller@millerlawspokane.com;

Carl Hueber ceh@winstoncashatt.com;

John D. Munding munding@crumb-munding.com

Michael D. Kinkley P.S.

s/Scott M. Kinkley

Scott M. Kinkley
WSBA # 42434
Attorney for Plaintiff
4407 N. Division, Suite 914
Spokane, WA 99207
(509) 484-5611
skinkley@qwestoffice.net